IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4085 OF 2005

Sajeet Kumar Solomon ...Applicant
vs.
State of Maharashtra
Deodan Govind Bhambal
Rev James Kamble ...Respondents

S.G.Rajput for the Applicant
Mr.C.R.Sonawane for Respondent No.2
Mr.Arjunwadkar for Respondent No.3

CORAM: A.S.OKA,J.
DATE : OCTOBER 28,2005

ORAL JUDGMENT:

1. This is an application made by the original complainant praying for quashing and setting aside the order dated 18th June 2005 passed by the learned 4th Ad hoc Additional Sessions Judge, Mumbai by which anticipatory bail was granted in favour of the Respondent Nos.2 and 3.

2. Before dealing with the factual aspects and submissions, it must be noted that when this application came up before this Court on 12th July 2005, time was granted to the Respondent Nos.2 and 3 to file reply. On 26th July 2005 this Court passed the following order :

. "My attention has been invited to condition No.2 of the order dated 27th May 2005 passed by the Additional Sessions Judge. It is obvious that the

Respondent Nos.2 and 3 have not complied with condition No.2 by procuring presence of Shri Rajendra Daga before the Investigating Officer. Though the said breach on the part of the Respondent Nos.2 and 3, prima facie, is ground for cancellation of anticipatory bail, time is granted to the Respondent Nos.2 and 3 till 5th August 2005 to comply with the said condition."

3. On 5th August 2005 the learned Advocate for Respondent Nos.2 and 3 stated that the Respondent Nos.2 and 3 will procure the presence of Rajendra Daga before the Investigating Officer on Friday 12th August 2005. On 31st August 2005, the learned A.P.P. showed the police report showing that the Respondent Nos.2 and 3 could not procure the presence of Rajendra Daga on 12th August 2005. On that day, the learned Advocate for the Respondents sought time. On 12th September 2005 I fully heard the submissions of the Advocate for the Applicant. Shri Walawalkar appearing for Respondent Nos.2 and 3 argued for some time and sought time till 23rd September 2005 to enable him to take instructions and to make further submissions. On 23rd September 2005, on the request made by the Advocate for Respondent Nos.2 and 3, application was adjourned till 7th October 2005. On 7th October 2005, the Advocate for the Respondent Nos.2 and 3 stated that though on earlier date a direction was issued to the Respondents to

remain present in this court, both of them were not present due to ill health. On the specific request made by the Advocate for the Respondent Nos.2 and 3, the application was kept on 21st October 2005 for his further submissions. On 21st October 2005 none appeared for the Respondent Nos.2 and 3. The Advocate for the Applicant on instructions of the Applicant who was stated to be present in the Court stated that the Respondent Nos.2 and 3 were not present in the Court though a direction was given by order dated 7th October 2005 to the Respondents to remain present. However, this Court did not decide the application as the Respondent Nos.2 and 3 and their Advocate were absent and accordingly, application was kept on 25th October 2005 for dictation of the Judgment. On 25th October 2005 Shri Sonavane who was regularly appearing for Respondent Nos.2 and 3 appeared before this Court and stated that he is representing one of the Respondents and other Respondent will be represented by Shri Arjunwadkar. On 25th and 27th October 2005 I have heard submissions of Shri Sonavane and Shri Arjunwadkar and today the application is kept for dictation of the Judgment.

4. Yesterday i.e. on 27th October 2005 the Advocate for Respondent No.3 filed an Affidavit of the Respondent No.3 stating therein that on 21st October 2005 he was present at 3.00 p.m. but he left the court for calling his Advocate. An application was filed by the Respondent No.2 dated 21st

October 2005 annexing thereto medical certificate and praying for exemption from personal appearance on 21st October 2005. The certificate annexed to the application shows that the Respondent No.2 was advised rest till 25th October 2005 on account of viral fever and weakness. On 25th October 2005, 27th October 2005 and even today also the Respondent Nos.2 and 3 are not present.

5. The present Applicant has filed a private complaint against the Respondent Nos.2 and 3 alleging commission of offence punishable under Sections 120-B, 465, 468, 471, 419, 420, 406 of the Indian Penal Code. The Applicant claims to be a citizen of India and the Chairman of Marathi Mission which is the Public Charitable Trust. The complaint refers to certain internal disputes in the trust. The complaint discloses that the trust holds immovable property. The allegation in the complaint is that on 16th December 2002 the accused persons entered into an agreement in favour of M/s.Nina Farms Private Limited, company registered under the Companies Act,1956 in respect of an immoveable property of the said trust. It is alleged that the accused persons signed the said agreement claiming to be trustees of the trust and the trust received substantial amount of Rs.50,00,000/- by way of consideration in respect of the transfer of the trust property. The allegation is that from the bank account of the trust, on 19th December 2002 three cheques for total sum of

Rs.50,00,000/- were deposited and on 23rd December 2005 a sum of Rs.45,00,000/- was shown to have withdrawn by a bearer cheque. Copies of the agreement and the statement of bank account of the trust was annexed to the complaint. By order dated 19th August 2004 the learned Magistrate directed that the complaint shall be treated as F.I.R. and investigation shall be made under Section 156 (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code). Accordingly F.I.R. was registered for offence punishable under Sections 120-B, 465, 468,471,419,420, 406 of the Indian Penal Code against the accused persons. One of the accused persons applied for bail before the learned Magistrate which came to be rejected.

6. An application for anticipatory bail was filed by the Respondent Nos.2 and 3 in the Sessions Court. The learned 4th Ad hoc Additional Sessions Judge by order dated 27th May 2005 granted ad-interim protection to the Respondent Nos.2 and 3. The learned Judge noted in the order that the submissions on merits were not fully heard and by consent of the parties including the complainant following ad-interim order was passed:

"1. The applicants are hereby directed to co-operate the I.O. by attending J.J.Marg police station on every Friday, Saturday and Sunday between 2.00 p.m. to

5.00 p.m till 18/6/2005 and to give full co-operation in the investigation of this case to the I.O.

2. The applicants are also directed to make Shri Rajendra Daga available before I.O. A.P.I. Shri Bagwan for his interrogation and investigation without fail as early as possible.

3. The applicants are also directed not to leave jurisdiction of J.J.Marg Police station without prior permission of I.O. A.P.I. Shri Bagwan or any other officer in-charge of this case."

7. The Investigating Officer submitted a report before the Sessions Court. The report discloses that the accused No.1 to 4 entered into an agreement with M/s.Neena Farms Pvt.Ltd. and accepted a sum of Rs.50,00,000/- towards consideration for the development of trust property situated at Sir J.J.Road, Mumbai-400008. It is recorded in the report that the accused persons returned a sum of Rs.45,00,000/- in cash out of a sum of Rs.50,00,000/- to Rajendra Daga, Partner of M/s.Neena Farms Pvt.Ltd and Daga and Company and they have remitted the amount of Rs.5,00,000/- to complainant- Mr.S.K.Soloman through Mr.Vilas Torne. The Investigating Officer noted that prima facie it appears that the receipts of the said payments appear

to be bogus. He pointed out that Rajendra Daga was not a signatory to the original agreement. It is noted in the report that one Mr.Nisar Kazi Managing Director of M/s.Nina Farms Pvt.Ltd. was summoned to the police station and was shown the receipts. He flatly denied to have received amount from the accused persons. Even the complainant denied to have received amount from the accused persons. It was further stated in the report that the accused persons never attended the police station and they have not co-operated for the purpose of investigation. It is noted that the accused persons could not make Rajendra Daga available for interrogation and they produced photo copy of an Affidavit of Shri Rajendra Daga. Therefore, strong objection was raised by the Investigating Officer for grant of anticipatory bail. The learned Sessions Judge by order dated 18th June 2005 granted anticipatory bail. The learned Judge noted the contention of the Investigating Officer that the Affidavit of Rajendra Daga produced by the accused persons was false and forged. The learned Judge observed that no custodial interrogation of the Applicants before him was necessary.

8. The learned Counsel for the Applicant submitted that the learned Additional Sessions Judge has completely ignored the report of the Investigating Officer which was filed before him. He submitted that when the earlier direction given by him was not complied with by the accused persons by procuring

the presence of Rajendra Daga, the learned Additional Sessions Judge ought not to have granted anticipatory bail. He submitted that offence is of very serious and grave nature involving large funds of the trust. He submitted that the entire transaction was bogus as it is alleged by the Respondent Nos.2 and 3 that they have withdrawn a sum of Rs.45,00,000/- in cash from the bank account of the trust and have paid the amount to Rajendra Daga. He pointed out that inspite of the order passed by the Sessions Court and assurance given by the Respondent Nos.2 and 3 to this Court, the Respondent Nos.2 and 3 could not made available Rajendra Daga for interrogation. He submitted that a case is made out for cancellation of anticipatory bail.

9. Shri Sonavane appearing for one of the Respondents submitted that the first direction given by the learned Additional Sessions Judge is without jurisdiction as he could not have directed the applicants in application for anticipatory bail to produce a witness for interrogation. He submitted that the entire documentary evidence is in the custody of the Investigating Officer which shows that there is no misappropriation by the Respondent Nos.2 and 3 and the amount has been gone back to Rajendra Daga who is the Director of M/s.Neena Firms Pvt.Ltd. He pointed out that the Applicant has no locus to file this Application.

10. Shri Arjunwadkar relied upon the decision of the learned Single Judge of this Court reported in 1992 Mh.L.J. page 1475 (Chandrakant Chandulal Bhansali vs. Shrikant Shrikrishna Joshi and another) and submitted that if the order granting anticipatory bail is not challenged by the State, the complainant can move for cancellation of anticipatory bail only if it is shown that he is directly aggrieved by the anticipatory bail granted to the accused. He submitted that the Applicant could have approached the same court for cancellation of bail. He also relied upon the decision of the learned Single Judge of this Court, Bench at Nagpur reported in 1999 Cri.L.J. page 3806 (The State of Maharastra vs. Sanjay s/o Moreshwar Damle and others) and submitted that the Petition under Section 482 of the said Code was not maintainable as order granting anticipatory bail is an interlocutory order. He submitted that the proper course available for the Applicant was to approach the Sessions Court for cancellation of bail. On merits, he submitted that custodial interrogation of the Respondent Nos.2 and 3 is not required as the entire case depends upon the documentary evidence. The learned A.P.P. relied upon the Affidavit of Mr.Salim J. Bagwan, Assistant Inspector of Police which shows that Rajendra Daga is not available at his various addresses.

11. I have considered the submissions. On plain reading of the material on record, it appears that the Respondent No.2

and 3 entered into an agreement as regards trust property in favour of M/s.Neena Firms Pvt.Ltd. and a sum of Rs.50,00,000/- was paid under the said agreement to the trust. It was their own case that a sum of Rs.45,00,000/- was withdrawn in cash by the Respondent Nos.2 and 3 and was paid to Rajendra Daga. The fact remains that there is ad-interim order passed by the Sessions Court directing the Respondent Nos.2 and 3 to procure presence of Rajendra Daga for investigation. However, Rajendra Daga could not be made available and the Respondent Nos.2 and 3 produced an Affidavit of Rajendra Daga. The copy of the alleged Affidavit of the said Daga shows that M/s.Neena Firms Pvt.Ltd. and M/s.Daga and Company obtained development agreement from the trust. The said Affidavit interestingly notes that the relationship of Rajendra Daga with M/s.Neena Firms Pvt.Ltd. was no longer cordial and therefore, it is stated that Rajendra Daga has received Rs.45,00,000/- in cash from the trustees. The learned Advocates for the Respondent Nos.2 and 3 could not show that the sum of Rs.50,00,000/- was paid from the from the personal account of Rajendra Daga to the trust. Prima facie, material on record indicates that the trust received a sum of Rs.50,00,000/- under the document of development agreement from M/s.Neena Farms Pvt. Ltd. and out of the said amount of Rs.50,00,000/-, a sum of Rs.45,00,000/- was withdrawn by the accused persons in cash from the trust account and was purportedly paid to the said Rajendra Daga. The allegation is

that a sum of Rs.5,00,000/- in cash was withdrawn and was paid to the present Applicant who is the original complainant.

12. The Affidavit filed by the Investigating Officer shows that the said Daga is not available on various addresses at Aurangabad and Pune. Interestingly, after the submissions were concluded, an Advocate attempted to appear for the said Daga in the present Application. On plain reading of the order granting anticipatory bail it is apparent that very important material viz. the report submitted by the Investigating Officer is not at all considered by the learned Additional Sessions Judge. The report discloses the particulars of cash amounts that have been withdrawn. The report also discloses that the Managing Director of M/s.Neena Firms Pvt.Ltd. has stated that the said company has not received back any amount. The receipts allegedly executed by the said Daga are found to be bogus by the Police. The very vital material which was available is not considered by the learned Additional Sessions Judge.

13. The Apex Court in a decision reported in (2003) 8 S.C.C. page no.77 (Bharat Chaudhary & another vs. State of Bihar and another) held that the gravity of offence and the need for custodial interrogation are the only factors which are required to be considered while deciding an application under Section 438 of Code of Criminal Procedure, 1973. In another

decision reported in (1997) 7 S.C.C. page 187, the principles governing grant of pre-arrest bail have been highlighted. The Apex Court held that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438 of the said Code.

14. In the present case it must be noted that this Court by order dated 26th July 2005 granted time till 5th August 2005 to procure the presence of Rajendra Daga. On 5th August 2005, on instructions of the Respondent Nos.2 and 3 their Advocate made a statement that they will procure the presence of Rajendra Daga before the Investigating Officer on Friday 12th August 2005 at 11.00 a.m. Admittedly the said assurance is not complied with. As stated earlier, thereafter adjournments were repeatedly granted to the Respondent Nos. 2 and 3. Respondent Nos.2 and 3 remained absent on many dates though there was a specific direction given in that behalf by this Court. The scenario which unfolds is that the Respondent Nos.2 and 3 on behalf of a public trust entered into a development Agreement in respect of the trust property in favour of a private limited company against payment of Rs.50,00,000/- by cheque by the said company to the trust. Thereafter, transaction is allegedly cancelled and the Respondent Nos.2 and 3 have withdrawn a sum of Rs.45,00,000/- in cash from the trust account and have allegedly paid the same to one Rajendra Daga. The said Rajendra Daga is not

available for investigation till today.

15. The submission of Shri Arjunwadkar is that the Applicant had no locus to file this application unless it is shown that he himself is vitally affected. Reliance is placed on the decision of the learned Single Judge of this Court by Shri Arjunwadkar. In the present case, criminal law is set in motion by the present applicant. The Apex Court in a decision reported in (2000) 2 S.C.C. page 391 (R.Rathinam vs. State) held that any member of public who has concern in the matter can move the High Court for exercise of suo motu power of cancellation of bail. Therefore, the Applicant is certainly entitled to move this Court.

16. It will be necessary to refer law regarding power of the High Court to cancel the bail. The Apex Court in a decision reported in (2001) 6 S.C.C. page 338 (Punam Vs. Rambilas) held that one ground for cancellation of bail would be where ignoring the material and evidence on record a perverse order is passed in a crime of serious nature. The Apex Court observed that interest of justice will also require the said perverse order be set aside and the bail be cancelled. The bail can be cancelled if there is an attempt on the part of the accused persons of evasion or abuse of the concession granted to the them in any manner. In the present case application is also under Section 482 of the Code and there is

a substantive challenge to the order granting bail. In the present case, as stated earlier, very important material in the form of the Report of the Investigating Officer has been completely ignored by the learned Additional Sessions Judge. On this ground, bail deserves to be cancelled. The subsequent conduct of the Respondent Nos.2 and 3 also indicates that they are taking undue advantage of the liberty granted to them. An assurance given to this Court on 5th August 2005 was not complied with and repeatedly the Respondent Nos.2 and 3 have remained absent though a direction was issued from time to time directing them to remain present in this Court. Application for exemption was made only for one particular date. Today the Respondent Nos.2 and 3 are absent. Therefore, considering all the aspects, the anticipatory bail granted deserves to be cancelled. In this case where misappropriation of large amount of a public trust is involved, custodial interrogation is necessary looking to the gravity of allegations.

17. Hence I pass the following order :

i) Accordingly, order dated 18th June 2005 passed by the learned Additional Sessions Judge is set aside. Anticipatory bail granted to the Respondent Nos.2 and 3 stands cancelled and the Respondent Nos.2 and 3 are directed to surrender.

ii) On the request made by the Advocates for the Respondent Nos.2 and 3, operation of this order will remain stayed for a period of six weeks from today subject to condition that the Respondent Nos.2 and 3 will report to the concerned Police Station on every Saturday between 10.00 a.m. to 1.00 p.m.

JUDGE